

PERSONAL TRANSPORT VEHICLE SHARE PERMIT AGREEMENT

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF DALLAS §

THIS PERMIT AGREEMENT is made and entered into by and between the Town of Addison, a home-rule municipal corporation, hereinafter called "Permitter" or "Town" and _____, a _____ corporation licensed in _____, hereinafter called "Permittee." In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, Town does hereby grant a Personal Transport Vehicle Share Permit, hereafter called "Permit."

This Permit is granted subject to the terms and conditions set out below:

1. Term. This Permit shall expire on December 31, 2019.

2. Use of Town of Addison Public Right-of-Way. The Town hereby grants permission to use the Right-of-Way on a non-exclusive basis, according to the terms of this Permit, solely for the purpose of offering Personal Transport Vehicle (PTV) Sharing Services within the Town. For purposes of this Permit, the term "Right-of-Way" means sidewalks, curbs, gutters, streets, alleys, roads and other pathways open to the public. The term "Personal Transport Vehicle (PTV) Sharing Services" means the renting of bicycles, scooters or similar devices on a short-term basis generally in exchange for compensation. This authorization is not a lease or an easement, and is not intended and shall not be construed to transfer any real property interest in Town property.

3. Use of Town of Addison Parks, Trails and Open Spaces: The Town hereby grants permission to use Town of Addison parks, trails and open spaces ("Parks") on a non-exclusive basis, according to the terms of this permit, solely for the purpose of offering PTV Sharing Services within the Town. This authorization is not a lease or an easement, and is not intended and shall not be construed to transfer any real property interest in Town property.

4. Other Town Property: The use of other Town of Addison property for PTV Sharing Services may be appropriate. The City Manager or their designee may authorize such use in a separate writing and may allow use of that property under the same terms as this Permit or different terms, at the sole discretion of the City Manager or their designee and such writing shall be a part of this permit to the same extent as if it was set forth herein.

5. Use. Permittee customers may use the Right-of-Way and Parks for parking of bicycles and scooters owned and maintained by Permittee, and for riding PTV Fleet vehicles. For purposes of this permit, the term "PTV Fleet" refers to all bicycles, scooters and similar vehicles owned by the Permittee operating in the Town and the term "" refers to all scooters owned by the Permittee operating in the Town. Use of the Right-of-Way and Parks, and Permittee's operations within the Town, shall, at a minimum:
 - a. not adversely affect the property of any third parties;

- b. not inhibit pedestrian movement or ADA access within Rights-of-Way, Parks and Other Town Property; and
- c. not create conditions which are a threat to public safety and security.

6. PTV Docking Stations. Permittee shall not place or attach any personal property other than PTVs, fixtures, or structures, including but not limited to PTV docking stations, to the Right-of-Way or Parks without the prior separate written consent and at the sole discretion of the City Manager or their designee, and such writing shall be a part of this permit to the same extent as if it was set forth herein.

7. PTVs. All PTVs that are part of the PTV Fleet shall:

- a. Meet any applicable requirements in the Texas Transportation Code, including for lights and reflectors, and all other state, federal and local requirements for the PTVs.
- b. Have an emblem of Permittee, current contact information (including telephone number and email address for relocation requests) and a unique identifier prominently displayed on the PTV.
- c. Be high quality and sturdily built to withstand the effects of weather and constant use for at least five years.
- d. Accommodate a wide range of users.
- e. Be well-maintained and in good riding condition.
- f. Not display third-party advertising.

8. PTV Parking. Permittee and the Town will collaboratively identify designated PTV parking zones to station PTVs in the PTV Fleet and corral rebalanced PTVs ("Home Zones.") In the event the parties cannot agree, the City Manager, or his designee, will be the final arbiter for designating Home Zones. The Home Zones will be identified on an up-to-date online map, to be maintained by Permittee, and available for viewing by the Town at all times. Link and password, if any, to be provided at time of permit.

- a. PTVs in the Bicycle Fleet and Scooter Fleet shall be parked on the sidewalk, or other hard surface, or a docking rack owned by the permittee, or at a public bicycle or scooter rack, or in a Town Park, or at another Town-owned location with prior written approval of the Town.
- b. PTVs in the Bicycle Fleet and Scooter Fleet shall be restricted to parking in accordance with the following:
 - i. Bicycles and Scooters can only be parked on hard surfaces (e.g. concrete, asphalt, brick).
 - ii. Bicycles and Scooters shall not be parked at the corners of sidewalks or within five (5) feet of crosswalks or curb ramps.
 - iii. PTVs parked on sidewalks must not reduce the minimum ADA clear sidewalk width of thirty-six (36) inches.
 - iv. PTVs shall not be parked on blocks where the sidewalk is less than forty-eight (48) inches in width.
 - v. PTVs may not be parked on blocks without sidewalks.
 - vi. PTVs may not be parked on sidewalks in front of single-family or duplex homes.

- vii. The Town reserves the right to determine certain block faces where PTV parking is prohibited.
- viii. PTVs shall not be parked in any way blocking:
 - 1. Transit stops, shelters or platforms;
 - 2. Commercial loading zones;
 - 3. Rail Road tracks and crossings;
 - 4. Passenger loading zones or valet parking service areas;
 - 5. Disabled parking zone;
 - 6. Street furniture that requires pedestrian access (for example - benches, parking pay stations, etc.);
 - 7. Curb ramps;
 - 8. Entryways; and
 - 9. Driveways.
- ix. PTVs parked in residential areas that do not impede pedestrian travel will be allowed to remain in place for up to forty-eight (48) hours after they are parked. However, upon receiving any complaint or request for removal, Permittee shall respond in the time periods as outlined in Section 15.

- c. PTVs in Parks must be parked to allow sufficient width for accessible pedestrian travel.
- d. PTVs may be parked on private property only with the permission of the private property owner.
- e. PTVs shall stand upright when parked.
- f. With the advance approval of the Town, Permittee may indicate virtual PTV racks with paint or decals where appropriate to guide riders to these preferred, though not required, parking zones in order to assist with orderly parking of PTVs throughout the Town. The Town, at its own discretion, may choose to support bike sharing with the installation of additional PTV racks or designated PTV parking zones.
- g. Permittee may remove Home Zones at their discretion; however, Permittee shall remove Home Zones upon Town request.
- h. Permittee will actively manage the PTV Fleet to ensure orderly parking and the free and unobstructed use of the Right-of-Way and Parks. Any PTV that is parked improperly shall be re-parked in a correct manner or shall be removed by Permittee within the timeframe as outlined in Section 15.

9. Communication with Town. Permittee shall provide the Town with a current contact name and phone number for staff that are capable of relocating, rebalancing, removing, and repairing their PTV Fleet. Permittee shall notify Town of any changes to contact information within 24-hours.

10. Customer Communication. Permittee shall:

- a. Educate users regarding laws applicable to riding and operating a PTV in the Town of Addison.
- b. Instruct customers on where parking is allowed and how to park a PTV legally and properly.

- c. Provide a mechanism for customers to easily and quickly notify the company that there is a safety or maintenance issue with the PTV, such as in the mobile application.
- d. Maintain a 24-hour customer service phone number for customers to report safety concerns or complaints, or ask questions.
- e. At the discretion of the Town, distribute a customer survey developed by the Town before the end of the pilot term.
- f. With direction and guidance from the Town, lead outreach efforts to business associations, major developers and property managers, community groups and other key stakeholders, to solicit input on the location of PTV Home Zones, program operations and program feedback.

11. Condition of Town of Addison Right-of-Way and Parks

- a. Town makes the Right-of-Way and Parks available to Permittee in an "AS IS" and "WITH ALL FAULTS" condition. Town makes no representations or warranties concerning the condition of the Right-of-Way and Parks or its suitability for use by Permittee or its customers, and assumes no duty to warn either Permittee or its customers concerning conditions that exist now or may arise in the future
- b. Town assumes no liability for loss or damage to Permittee's PTVs, Docking Stations or other property. Permittee agrees that Town is not responsible for providing security at any location where Permittee's PTVs are stored or located, and Permittee hereby waives any claim against Town in the event Permittee's PTV, Docking Stations or other property are lost or damaged.

12. Maintenance and Care of portion of Right-of-Way and Parks: Permittee expressly agrees to repair, replace or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of the Permittee's use of Right-of-Way, Parks and other Town Property. Should Permittee fail to repair, replace or otherwise restore such real or personal property, Permittee expressly agrees to pay Town's costs in making such repairs, replacements or restorations.

13. Operations & Maintenance. Permittee shall be responsible to maintain the PTV Fleet. Permittee shall be solely responsible for all maintenance and service costs in order to maintain the PTV Fleet and associated maintenance to minimum level of service and reporting as outlined in Section 15.

- a. The Town will notify Permittee of any PTV that is found adversely affecting the Right-of-Way or Parks. Permittee shall be responsible to correct improperly parked PTVs within the timeframes outlined in Section 15.
- b. Any inoperable PTV, or any PTV that is not safe to operate shall be removed from the Right-of-Way within 24 hours after notice from the Town, and shall be repaired before the PTV is returned to revenue service.

- c. Permittee shall give the Town special rights access, via Permittee’s app or other device, to immediately unlock and remove PTV blocking access to the Right-of-Way or Parks.
- d. Any PTV found and retrieved by the Town in a stream, lake, or other water body shall be deemed unsalvageable and may be immediately discarded.

14. Research. Permittee agrees that the Town may use a third-party researcher to evaluate the PTV Sharing Services program. Permittee will share data with the third-party researcher for purposes of evaluating or enforcing the requirements of this pilot program.

15. Level of Service. The Permittee must meet the following Minimum Performance Standards. Additionally, Permittee shall provide reports monthly as described in Measurement Tools below to the Town in order to help the Town measure the success of the PTV Sharing Services program in serving its residents and visitors and improving the livability and mobility of Town of Addison residents and visitors.

Minimum Performance Standard	Measurement Tools
<p style="text-align: center;"><u>Customer Service:</u></p> <p>The app will be operational 99.5% of the time (uptime).</p>	<p>Uptime reporting.</p>
<p style="text-align: center;"><u>Distribution & Usage:</u></p> <p>Fleet will focus on serving people in the Town of Addison.</p> <p>No more than 3 PTVs deployed in a Home Zone without consent of Town.</p>	<p>Maps showing aggregate/heat map usage patterns.</p>
<p style="text-align: center;"><u>PTVs and Scooters in Service:</u></p> <p>Number of PTVs shall be commiserate commensurate with expected level of service.</p>	<p>Daily uptime reports showing number of PTVs in service, broken out by vehicle type.</p>
<p style="text-align: center;"><u>Rebalancing:</u></p> <p>General rebalancing shall occur no less than weekly.</p> <p>Upon request or complaint, PTVs will be relocated or rebalanced within two (2) hours of receiving notice, Monday-Friday from 8am-8pm, not including State and Federal holidays. At all other</p>	<p>Log containing number of requests for rebalancing and response time.</p>

time, within 24 hours of receiving notice.	
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16. Impoundment. If the Permittee fails to comply with the performance standards outlined in Section 15 or if the Permittee’s property poses an eminent danger to the safe operation or free flow of traffic, the Town may remove and impound the Permittee’s property. If a PTV is impounded, an impoundment fee of \$25 per bicycle or scooter shall be assessed against and collected from the Permittee as a condition for the redemption of such PTV. The Director of Infrastructure and Development Services shall have the authority and discretion to abate such impoundment fees upon showing of good cause. If after the expiration of fifteen (15) days of the Town mailing a notice of failure by the owner to redeem the PTV from impoundment, and such property is not redeemed by the owner or their agent, the Town may dispose of the property.

17. Special Events. For special events in the Town that require temporary changes to Home Zones or the removal of PTVs from the Right-of-Way or a Park, the Permittee shall be responsible for any adjustment or removal of its PTV Fleet in accordance with the following:

- a. Two weeks prior to the event, Town staff will contact the Permittee alerting them to the upcoming event.
- b. Permittees must relocate or remove any PTV Fleet vehicles prior to a deadline established by Town staff and as requested by Town staff during an event.

18. Required Reports. Permittee shall cooperate with the Town in the collection and analysis of aggregated data concerning its operations. The Permittee will provide reports at the Town’s request. Such reports will include, but not be limited to:

- a. Aggregated breakdown of customers using PTVs broken out by vehicle type in Town as to whether they are Addison residents or not.
- b. Number of reported collisions, and primary collision factor, if available.
- c. Within Town boundaries: the total number of trips taken per day, total number of trips by hour of the day, plus monthly and cumulative totals for each vehicle type.
- d. Origin and destination data.
- e. At least once during the pilot period, Permittee will conduct a survey of its users in the Town focused on age and will provide aggregated data to the Town. Age will be reported into these age groups: 5-17, 18-24, 25-34, 35-44, 45-54, 55-64, 65 and over.

19. Nonexclusive Permit. This Permit is nonexclusive and is subject to (i) any existing utility, drainage, or other facility located in, under, or upon the Right- of-Way or Park;

(ii) to any existing permit, easement or other similar interest granted by Town to any individual, corporation or other entity, public or private; and (iii) to all other matters of record.

20. Superior Right. This Permit is subject and subordinate to the prior and continuing right of Town, its successors and assigns to use all of the public property for the public benefit. Town, for itself and other permitted users, reserves full rights, consistent with the rights herein granted.

21. Revocable. This Permit is revocable and may be terminated by either party for convenience upon thirty (30) days written notice.

22. Permit Fee. Permittee shall pay Town the sum of **FIVE HUNDRED AND NO/100 DOLLARS (\$500.00)** upon submission of application.

All permit payments shall reference this Bike and Scooter Share Permit on the check and shall be paid to Town at the following address:

Town of Addison, Texas
Attention: Infrastructure and Development Services Department
P. O. Box 9010
Addison, TX 75001-9010

23. Escrow Accounts. Upon submission of application, the Permittee must provide \$5,000.00 in cash per 1,000 PTVs (not prorated) that the Town will hold in escrow for the term of this Permit. In the event of default and termination as described in Section 27 below, the Town may use such funds to remove or dispose of the PTV Fleet or any part thereof or repair Town property that was damaged by the Permittee or its customers or invitees. At the conclusion of the term of this Permit, the Town will return such funds to Permittee or its designee within thirty days after the Town receives a written request for a refund from the Permittee.

24. Liability Insurance. During the permit term Permittee shall maintain a policy of general liability insurance at Permittee's expense insuring Permittee against liability assumed by Permittee hereunder and insuring Permittee and Town against liability arising out of or in any way incident to use or occupancy of Town property. Such policy or policies shall provide that the policy is primary and shall apply without regard to other policies separately carried. The initial amount of required insurance shall be at least \$1,000,000.00 Combined Single Limit for Personal Injury, Bodily Injury including death and Property Damage and shall be subject to period increases based upon inflation, recommendation of professional insurance advisors, and other relevant factors.

Town, its elected officials, officers, agents and employees must be named as an additional insured under all liability insurance policies required by this Permit. All policies shall be endorsed to provide a waiver of subrogation in favor of the Town. All policies shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, nonrenewal, material change, or reduction in coverage until ten (10) days prior written notice has been given to the City Manager of the Town of Addison." The insurance carrier must be authorized to do business in the State of Texas and the must be rated A- or

better by AM Best rating. A certificate of insurance reflecting the required coverage shall be presented to Town prior to Town's approval and execution of this Permit. Subsequent certificates of insurance shall be provided to Town whenever Permittee renews, changes or amends their insurance policies or upon request by Town.

25. **Indemnity.** Permittee shall defend, indemnify, protect and hold Town, its officers, directors, parents, subsidiaries, affiliates, agents, servants and employees harmless from and against any and all claims, expenses (including but not limited to attorney's fees), demands, judgments and causes of action of every kind and character, including but not limited to claims in contract, tort, including negligence, or strict liability arising in favor of any person (including but not limited to employees, servants, agents, customers or invitees of Permittee) or entity for personal injury, bodily injury, including death, or damage to property whether or not arising from the sole or concurrent negligence or fault of Town or employees or independent contractors directly responsible to Town arising out of, incident to, or in anyway connected with Permittee's exercise of rights herein granted or obligations pursuant thereto, including but not limited to separate operations being performed on Town property or any condition of Town property.

26. **Compliance With Law.** Permittee shall, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction, prevention and abatement of nuisances in or upon or connected with said premises because of Permittee's use thereof. Permittee shall also comply with all laws and regulations pertaining to hazardous waste, hazardous materials and the environment.

27. **Condition Upon Termination.** Upon termination of this Permit due to default or convenience to the Permittee, Permittee shall immediately vacate the Right-of-Way and Parks, removing all improvements and personal property so as to return the Right-of-Way and Parks to the condition in which they existed on the date this Permit was executed. All personal property not removed at Town's request shall become Town's property at no cost or expense to Town. Upon termination of this Permit for default of or convenience to the Town, Permittee shall have fourteen calendar days to remove all improvements and personal property so as to return the Right-of-Way and Parks to the condition in which they existed on the date this Permit was executed. All person property not removed at the Town's request at the end of the fourteen-day period shall become Town's property at no cost or expense to Town.

28. **Assignment and Subletting.** This Permit is personal to Permittee and may not be sold, transferred, assigned or sublet without prior written approval by an authorized representative of Town.

29. **Notices.** All written notices required under this Permit must be hand delivered or sent by certified mail, return receipt requested, and addressed to the proper party at the following addresses:

TOWN

Town of Addison, Texas
Attention: City Manager
P. O. Box 9010
Addison, TX 75001-9010

with copy to:

Town of Addison, Texas
Attention: Director of Infrastructure and Development Services
P. O. Box 9010
Addison, TX 75001-9010

PERMITTEE

Each party may change the address to which notices are to be sent by giving the other party notice, within ten (10) days, of the new address in the manner provided by this paragraph.

30. Default. It is understood and agreed that, in case of default by Permittee in any of the terms and conditions herein stated and such default continues for a period of ten (10) calendar days after Town notifies Permittee of such default, Town may, at its election, terminate this Permit and upon such termination all rights of the Permittee hereunder shall cease and come to an end. If such termination results from Permittee's default there shall be no prorated refund to Permittee of the permit fee for the then current term; however, in the event that termination of this Permit is for the convenience, Town shall refund to Permittee the prorated portion of the permit fee for the then current term. If Permittee files for bankruptcy it shall be a default under this Permit, Town may waive this default in writing at its discretion.

31. Prior Agreements. This Permit constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Permit.

32. Texas Law. This Permit shall be construed under, and in accordance with, the laws of the State of Texas. Venue shall lie in Dallas County, Texas.

33. Amendment. No amendment, modification, or alteration of the terms of this Permit shall be binding unless it is in writing, dated subsequent to this Permit, and duly executed by the parties to this Permit.

34. Authority to Sign. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Permit on behalf of the parties hereto.

EXECUTED as of the _____ day of _____, 2019.

TOWN

TOWN OF ADDISON, TEXAS
a home-rule municipal corporation

By: _____
Wesley Pierson
City Manager

PERMITTEE

a _____ Corporation

By: _____
Name
Title